U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33464200

Date: SEPT. 24, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a financial technology company, employs the Beneficiary as its chief executive officer and seeks to classify him as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.[1]

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small

[1] The Petitioner's signature on Form I-290B, Notice of Appeal, appears to be digitally reproduced. It is indistinguishable from signatures on other forms in the record, such as Form G-28, Notice of Entry of Appearance of Attorney or Representative, and the Form I-140 petition. But we cannot make a conclusive determination, in part because the original paper documents are not in the record before us on appellate review. Any future filings in this proceeding must be hand-signed in ink by an authorized official of the petitioning entity, as required by the form instructions and 8 C.F.R. § 103.2(a)(2). A benefit request, such as an appeal, will be rejected if it lacks a valid signature. 8 C.F.R. § 103.2(a)(7)(ii)(B).

percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of the individual's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner stated that the Beneficiary "established and led to success several businesses" in Ukraine, including a ride-sharing service, "luxury retail entities," and a "provider of enterprise software that modernized the operations of Eastern European taxi-services." The Beneficiary entered the United States in April 2015 as a B-1/B-2 nonimmigrant visitor. After holding E-2 nonimmigrant status as a treaty investor from 2017 to 2023, the Beneficiary currently holds O-1A nonimmigrant status as an individual with extraordinary ability or achievement. The Petitioner offers a platform, conceived by the Beneficiary, whereby online purchasers can apply "cash back" rewards to retirement savings or student loan payments.

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied six of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner had satisfied one criterion, relating to a leading or critical role for a distinguished organization. On appeal, the Petitioner maintains that it has also satisfied the other five claimed criteria.

Upon review of the record, we will not disturb the Director's conclusion that the Petitioner had met the criterion relating to a leading or critical role. We also conclude that the Petitioner has satisfied

two other criteria, pertaining to memberships and published material. We will discuss the claimed criteria below.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The record documents the Beneficiary's receipt of a [redacted] Award for "Financial Technology" awarded by [redacted] in 2019. We agree with the Petitioner that the Beneficiary was the named recipient of the award, but we also agree with the Director's determination that the Petitioner had not established that the award is nationally or internationally recognized.

On appeal, the Petitioner asserts that the [redacted] Award was "established by . . . well-known leading national institutions in the retirement planning industry." The cited supporting evidence is promotional material from the awarding entities' own websites. We need not rely on self-promotional material of this kind. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) aff'd 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as evidence of the magazine's status as major media).

Even then, the language of the regulation requires recognition of the prize or award itself. In response to a request for evidence (RFE), the Petitioner had quoted 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual, which states: "Examples of qualifying awards *may* include . . . [*c*]*ertain* awards from well-known national institutions or well-known professional associations." (Emphasis added.)

[redacted] own press release indicates that the Beneficiary received the "inaugural" award, demonstrating that the award had no previous history, and therefore no prior recognition, when the Beneficiary received the first one. The awarding entity's own promotional statements do not establish that the award is nationally or internationally recognized, and the Petitioner did not submit evidence to show that the award received industry attention beyond the three affiliated awarding entities themselves.

The Petitioner has not met its burden of proof to meet the criterion's regulatory requirements.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Beneficiary joined the Forbes Finance Council in 2017. The Director concluded that "it appears that Forbes Business Council requires an annual fee." The Director quoted 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), which states an association that admits members "based *solely* on . . . [t]he payment of a fee" would not satisfy the regulatory requirements. The record, however, does not indicate that payment of a fee is sufficient, by itself, to secure Council membership. If an organization requires outstanding achievements as judged by recognized national or international experts, then the *additional* requirement of a membership fee is not inherently disqualifying.

The co-founder and chief operating officer of the Forbes Finance Council stated in a letter that the Beneficiary "was invited to join our organization . . . due to his outstanding achievements as a leading senior-level executive in the financial field, and his extraordinary contribution to the global business community." The official stated that a candidate "[m]ust be a senior-level executive with a successful company" with at least one million dollars in annual revenue or financing, and must pass "an internal review process . . . by our professional selection committee to determine the level of their outstanding qualifications within the field, taking into account publications, speaking engagements and other contributions that demonstrate knowledge and expertise." The official added that "membership decisions are made by recognized national or international experts in finance."

In the RFE and again in the denial notice, the Director stated that "Forbes Business [sic] Council is a resource platform for business networking and marketing," and therefore the Beneficiary's membership "would not be considered the beneficiary's membership in an association." The Director did not elaborate or cite any record evidence that led to this conclusion.

Based on the available evidence, and in the absence of contrary evidence, the Forbes Finance Council appears to qualify as an association in the Beneficiary's field. The Director did not identify any reason to discount the Council official's description of the membership requirements or to question the authenticity of the letters containing that information. Therefore, we conclude the Beneficiary has met the requirements of this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted printouts of several online articles published between 2017 and 2023. Some of these articles are not about the Beneficiary, relating to his work; rather, they include brief quotations from the Beneficiary, in a context that make him a co-author rather than the subject of the articles. Other materials appear to be promotional in nature, such as an article from *Entrepreneur* by an author identified as working in public relations and marketing. In some other cases, the Petitioner has not shown that the articles appeared in professional or major trade publications or other major media. But these objections do not apply to *all* the submitted articles.

Some of the Petitioner's submissions appear to be sufficient to meet the Petitioner's burden of proof with respect to the regulatory requirements for the criterion. The weight to be afforded to the published materials is an issue for the final merits determination.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). In some cases, testimonial letters that lack corroborating documentation may have somewhat diminished weight.

We will also consider evidence of significant commercialization of the person's work. *Id.* The Petitioner must establish the nature and extent of the commercial use.

The Petitioner initially submitted two letters praising the savings methodology that the Beneficiary developed and implemented through the petitioning company. Both letters have close ties to the Petitioner and the Beneficiary; one, a professor at the [redacted] is an advisor to the Petitioner; the other, a managing director at a retirement advisory firm, is a member of the Petitioner's board of directors.

The Petitioner's advisor credited the Beneficiary with having "invented a revolutionary new approach" to retirement savings by tying "cash back" rewards from online transactions to savings contributions. The advisor asserted that "some firms . . . have observed [the Petitioner's] success and are trying to imitate its approach," but he provided no details or corroborating evidence.

The member of the Petitioner's board of directors stated that the Petitioner "is partnered with over 1,300 online businesses." The Petitioner submitted copies of seven service agreements with companies involved in various aspects of financial services. Most of the agreements are for the Petitioner to provide certain services to customers, for which the Petitioner would waive its fee provided the customer actively marketed the Petitioner's service to the customer's own clients.

Apart from the letters, the Petitioner submitted a document with the heading "Industry leaders endorsements." The document includes statements, generally a paragraph in length, from 17 individuals. In the denial notice, the Director declined to consider these endorsements, stating that LinkedIn is a self-edited platform that lacks reliability. The record, however, does not indicate that the endorsements originated on LinkedIn. Rather, the Petitioner appears to have prepared the endorsement document, including LinkedIn screen captures to provide biographical information about each of the quoted individuals.

Some of these brief testimonials praise the Beneficiary's ideas as "revolutionary" and "the best thing that has happened to the retirement industry in decades," and that the Beneficiary "very quickly is making his company a household name." Other testimonials focus on the Beneficiary's skills or personal character. The brief statements lack significant detail and do not explain how the Beneficiary's innovations are of major significance in the field.

Several statements emphasize potential future impact. A general partner at another financial firm stated that the Beneficiary's system "can potentially positively impact millions of Americans." One writer, who indicated that the petitioning company "is already starting to have an impact with my clients and is potentially at the tipping point of a major impact on how everyday Americans save for retirement," is on the Petitioner's board of directors.

In the RFE, the Director stated that the Petitioner's initial submission had not shown "that the beneficiary's work has had significant influence on the field of business at large."

In response, the Petitioner quoted previously submitted materials and asserted: "Quite a few industry influencers had recognized the importance of the beneficiary's solution and invested in his venture." The Petitioner stated that the company has raised over $5 million in capital, and claimed:

> Such backing is not possible without a thorough evaluation by seasoned professionals who only invest in projects with recognized novelty, distinctive value proposition, and capacity for significant growth and impact. The numbers reached by [the Petitioner] speak for themselves.
>
> It is indisputable that the influx of such substantial investments from top-tier country investors serves as a resounding endorsement, affirming the originality, uniqueness, and tremendous potential inherent in a business idea.

The Petitioner did not submit corroborating evidence to show that each of these investors based their decision on the major significance of the Beneficiary's original contributions, rather than some other factor such as their belief that the company would be profitable and therefore offer a worthwhile return on investment.

The Petitioner has not met its burden of proof to establish, by a preponderance of the evidence, that the Beneficiary's original contributions are of major significance in his field.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

A scholarly article should be written for learned persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner asserted that the Beneficiary "is a regular author [for] the most prestigious magazine in the financial industry – **Forbes Magazine**." The Petitioner submitted copies of seven articles written or co-written by the Beneficiary that appeared on *Forbes*'s website between 2017 and 2021. The Beneficiary's membership in the Forbes Finance Council provides him with the opportunity to publish such articles.

The Director determined that the Beneficiary's articles "were not scholarly but informational," and "were written for the general population" rather than "for 'learned' persons."

On appeal, the Petitioner disputes the Director's conclusion, stating: "The beneficiary's articles are . . . scholarly and intended for learned persons," "written for other experts," and "written in the specialized language that requires deep theoretical and practical understanding of the financial planning market, its concepts and mechanisms."

The record does not support the Petitioner's characterization of the Beneficiary's *Forbes* "Council Post" articles. Several of the submitted articles are aimed directly at parents, saving for their children's education; entrepreneurs with startup businesses; and "millennials . . . looking for better ways to save." Even the articles addressing the financial services industry are written in general terms rather than "specialized language that requires deep theoretical and practical understanding of the financial planning market." The following quotations are representative examples:

> Millennials need debt counseling now more than ever. With commercial debt from student loans, cars and even mortgages continuing to rise, these young adults need to understand exactly what their debt could mean for their future.
>
> * * *
>
> Millen[n]ials have already taken the reins from the baby boomers as the largest generation in the workforce. Yet, there appears to be limited access to automated savings and automatic retirement contributions for those who desire it, even as other industries keep up with the desire for automation.

The Beneficiary's articles amount to general advice, sometimes promoting the product that the Petitioner offers, rather than scholarly writings requiring profound knowledge.

As explained above, we agree with the Director that the Petitioner has not met its burden of proof with regard to prizes, scholarly articles by the Beneficiary, and original contributions of major significance. Nevertheless, the Petitioner appears to have met its burden of proof relating to two other criteria, pertaining to memberships and published materials about the Beneficiary.

III. CONCLUSION

Because we conclude that the Petitioner has satisfied at least three of the initial criteria at 8 C.F.R. § 204.5(h)(3), we will remand the matter for the Director to render a final merits determination in the first instance. The Director must evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. A final merits determination involves analyzing an individual's accomplishments and weighing the totality of the evidence to determine if they have achieved a degree of recognition sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2]

In a final merits determination, evidence of the Beneficiary's existing impact and recognition may have more weight than speculation about the impact that his work might have in the future. Among other potential factors, the Director may consider whether:

- The published materials about the Beneficiary's work focus on the importance of his work to the field or, instead, primarily serve to promote or advertise his and the Petitioner's work;
- Other companies have adopted the Beneficiary's innovations; and
- The Petitioner has established the extent of the Beneficiary's impact on the field.

[2] *See generally* 6 *USCIS Policy Manual*, supra, at F.2(B)(2) (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

In weighing these issues, the Director must consider the totality of the record. The Director must also consider how well the Petitioner has explained the significance of the submitted evidence, and how it demonstrates that the Beneficiary has achieved sustained national or international acclaim and recognition in his field of expertise. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2)

When assessing the extent of the Beneficiary's acclaim and recognition, the Director should keep in mind that general figures such as the total amount of student debt in the United States, or the overall rate of retirement savings, may illustrate the hypothetical potential impact of the Beneficiary's work, but do not establish that he has already earned sustained national or international acclaim for that work.[3]

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. Under the two-step *Kazarian* framework, the Petitioner's satisfaction of three baseline criteria sets the stage for a final merits determination, but does not determine its outcome. The Petitioner must show that the Beneficiary has earned a degree of recognition that indicates sustained national or international acclaim and demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

We remand this matter in order for the Director to render a final merits determination.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Ultimately the outcome of this petition rests on its own record of proceedings.